Decision 02-09-055 September 19, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Arrowhead Manor Water Company for a General Rate Increase.	Application 99-10-027 (Filed October 19, 1999)
Investigation on the Commission's Own Motion into the Operations, Practices, and Water Quality of the Arrowhead Manor Water Company and to Evaluate whether the Utility Properly Handled Its Safe Drinking Water Bond Act Surcharge Revenues.	Investigation 00-03-016 (Filed March 16, 2000)

ORDER DENYING APPLICATION FOR REHEARING OF DECISION NO. 02-07-009

I. SUMMARY

By this decision we deny rehearing of Decision (D.) No. 02-07-009 ("the Decision"), sought by Kathleen I. Johnson, Acting Representative, Arrowhead Manor Water Company ("AMWC").

In the Decision, we found that AMWC has been unable or unwilling to adequately serve its ratepayers, and has been unresponsive to the rules and orders of the Commission. We therefore directed our General Counsel to petition the Superior Court of San Bernardino County to appoint a receiver for the water system in accordance with Public Utilities Code Section 855. We also authorized AMWC a general rate increase of $47,815 (16.8%) and reinstated a Safe Drinking Water Bond Act loan surcharge to replace the surcharge previously discontinued. We further found AMWC to have improperly diverted SDWBA surcharge funds but also to have accumulated an approximately equal uncollected balance in its

purchased water balancing account and ordered the two amounts to be applied to offset and discharge one another. Finally, we concluded that all penalties imposed by the California Department of Water Resources on CMWC for failure to make timely loan payments to be the company's obligations under its DWR contract and not recoverable from ratepayers.

II. DISCUSSION

Applicants make seven allegations in support of their Application, all of which are vague, conclusory, and fail to meet the requirements of Section 1732 of the Public Utilities Code and also Rule 86.1 of the Commission's Rules of Practice and Procedure.

Section 1732 provides:

> "The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application."

Rule 86.1 provides:

> "Applications for rehearing shall set forth specifically the grounds on which applicant consider the order or decision of the Commission to be unlawful or erroneous. Applicants are cautioned that vague assertions as to the record or law, without citation are accorded little attention. The purpose of an application for rehearing is to alert the Commission to an error, so that error may be corrected expeditiously by the Commission."

Two of the allegations concern the current management of the company. Applicant argues that "Current management be considered in the Receivership process" and "an evaluation of new management and its plans for the future." Neither of these allegations complies with the requirements set out above. In fact, there is no specific allegation whatever of error predicated on the Commission's failure to "consider" the company's new management. Further,

"new management" appears to consist of Applicant, Kathleen I. Johnson. A review of the record indicates that Ms. Johnson was an active participant in these proceedings from the Prehearing Conference until the close of evidence.

Applicant next complains that "Tariff calculations need to be revised to include SCE rate increase and COLA for 2000 and 2001." First, as Applicant points out at page 3 of the Application, the Decision uses the rates calculated and submitted in 2002 based on the expenses in the year 1999. Applicant would, in effect, have us reopen the proceedings to receive evidence after the close of the test year. Applicant has also filed a supplement to the Application relating to this same issue. The company complains that the rate increase effective on July 17, 2002 will not include Edison's small rate increase. However, on August 16, 2002, the day after this supplement was filed, Applicant filed Advice Letter 49-W-A to account for the Edison increase, which was approved on August 19, 2002.

Also in the Supplement, Applicant appears to be requesting that we "prorate" its December 31, 2002 statement from DWR to coincide with the effective date of the Decision and the above Resolution. However, the Commission has no authority to amend Applicant's payment arrangements with DWR. Further, this is not an allegation of error in the Decision and not the proper subject of an Application for rehearing.

Applicant's next allegation is that "Balancing Account calculation needs to updated and use of these funds needs to be reconsidered." Again, Applicant would have the Commission reopen these proceedings to consider later recorded data. Further, there is a failure to indicate exactly how the Balancing Account calculation should be updated and how the use of these funds should be "reconsidered". As such, the allegation utterly fails to meet the requirements for applications for rehearing as set out above. It is simply a vague conclusion with no substantiating facts or figures.

Applicant next complains that "SDWBA loan calculation, including the double penalty interest issue, should be properly addressed." On the contrary,

this issue was thoroughly considered, beginning at page 22 of the Decision. We pointed out that Applicant had commingled DWR surcharge funds with operations funds which, according to Applicant was necessary to "keep the water flowing …" (Decision, page 22). In fact, beginning at page 24 of the Decision, we described in detail the difficulties encountered by Applicants following the purchase of the water system in 1988 and we thoroughly addressed this issue. Thus, we have addressed these issues. In any event, the allegation does not rise to a specification of error, nor does it meet the requirements of Section 1732 and Rule 86.1. The allegation is therefore without merit.

Applicant's next argument is "The advisability of refunding surcharge collections to the customers, rather than using the Balancing Account funds to pay down the SDWVA loan." Again, this allegation does not rise to the level of legal error required by the above cited authorities, nor does Applicant elaborate on its recommendation in the body of the Application. It would appear that the company is complaining about the language contained at page 40 of the Decision. There, we reiterated that the company should be held liable to its customers for the full amount of past SDWBA surcharge revenues collected from those customers and not applied toward the SDWBA repayments for which the surcharge was authorized. We further pointed out that the amount of the undercollection in the company's purchased water balancing account and the amount of surcharge revenues collected from customers and not applied toward the loan are approximately equal. We therefore determined that one should offset the other. In any event, Applicant's argument has not convinced us that this decision was not "advisable". We therefore find the argument to be without merit.

Finally, Applicant recommends "An update of the November 6, 2000, Stipulation to account for the time that is elapsed." Applicant fails to indicate what parts of the stipulation need to be updated or what the purpose of such an update would accomplish. Further, the Stipulation was signed by all parties. What Applicant would apparently have us do is reopen these proceedings

to take new evidence on unspecified issues. This is simply not possible in the framework of the rules and regulations that we have adopted with regard to processing rate increase applications for small water companies. It is further vague and conclusory and fails, along with Applicant's other allegations, to meet the requirements adopted by the Legislature in Section 1732 and by our Rule 86.1. As such, the allegation is without merit.

In addition to the above separately stated allegations of error, Applicant also makes several general conclusory allegations in the summary at page 1 of the Application. Applicant alleges that we misused Decision No. 92178, dated September 3rd, 1980 because the Decision cited Ordering Paragraph 3 "in a significant manner" although this ordering paragraph was not submitted as a part of the testimony of the Staff witness. A review of the record indicates that the Decision was admitted into evidence in its entirety. Furthermore, we have undoubted authority to take judicial notice of its own prior decisions, whether they have been admitted into testimony or not. The allegation is therefore without merit.

Applicant next complains that interest at the 90-day commercial paper rate was not added to its balancing account from August 31, 2000 to July 17, 2002, the date this Decision was issued. We discussed this issue at length beginning at page 28 of the Decision, where we summarized the Stipulation as showing a figure of $321,557 in unremitted SDWBA surcharges, including interest, through the first quarter of 2000, and a positive purchased water balancing account of $342,812, including interest as of August 31, 2000. However, as we pointed out at footnote 23, beginning at page 29 of the Decision, the commercial paper rate had dropped to very low levels in late-2001. Conversely, the amounts owing to DWR because of the company's failure to maintain its loan payments since 1995 have grown at a higher 7.4% DWR interest rate, and penalties have been accruing at 1% per month on the delinquent interest. Because of the disparity in the two accumulating interest rates, we determined to

simply offset the unremitted SDWBA surcharges of $321,557 with the positive purchased water balancing account of $342,812, also including interest. We continue to believe that this was an equitable treatment of the positive and negative balances and that this treatment does not, in any event, constitute legal or factual error.

Finally, Applicant argues that the Commission's use of the $321,557 figure in unremitted DWR surcharges is in error because it includes penalties and interest, whereas as the Commission "has no jurisdiction over the loan agreement between the DWR and AMWC." We acknowledged as much in the Decision beginning at page 16. However, our consideration of the penalty and interest imposed by DWR in arriving at the $321,557 surcharge figure does not amount to our imposition of a further penalty, as alleged by Applicant. The Commission is not penalizing Applicant for its failure to make timely payments, DWR is. The allegation is without merit.

III. CONCLUSION

Applicants have demonstrated no legal or factual error in the Decision and rehearing should be denied.

Therefore, **IT IS ORDERED** that:

1. Rehearing of Decision No. 02-07-009 is denied.
2. This proceeding is closed.

This order is effective today.

Dated September 19, 2002 at San Francisco, California

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners